CONNECTICUT AND THE FIRST TEN AMENDMENTS TO THE FEDERAL CONSTITUTION

(By Thomas H. Le Duc, Yale University)

Connecticut presented in 1789 as formidable a citadel of reaction and privilege as one could easily find anywhere in the new union of States. No social upheaval had attended the separation from Great Britain and the Congregationalist oligarchy retained its pre-war precedence intact. Indeed, the faintly democratic tone of the revolution had surrendered to a conservative reaction, and now, behind an elaborate facade of democratic machinery, a small propertyd interest quietly controlled church, State, and education.¹

The framework of government was largely conventional. The charter of 1662 provided the only trace of organic law for no State constitution had been drawn to supplant it. As the prerogative of diallowance had perished in the Revolution, the assembly rested supreme in its power. Civil liberties were not recognized in any fundamental law and hence the position of the citizen was subject to the precarious tolerance of the legislature.²

This legislature was composed of two houses—council and house of representatives. Two sessions were held annually, one in Hartford and one in New Haven. The lower house was chosen semiannually by direct popular vote. As each town sent one or two representatives, the whole body numbered around 240 and tended to become unwieldy in the dispatch of business. The council consisted of the Governor, the lieutenant governor, and 12 “assistants” elected by the lower house after a complicated process of nomination by the whole electorate. Despite the frequent elections, tradition opposed the replacement of men in either house except at the death or resignation of a member.

The Governor, lieutenant governor, and minor officers were elected by popular ballot each year, but ordinarily all of these officials were reelected throughout their lives, and the Governor was ordinarily succeeded by his lieutenant. By pluralism and nepotism, a small clique in New Haven and Hartford managed to retain a firm clutch on the affairs of the State. That three generations of one family held the office of secretary of state continuously for a century was not viewed as particularly undesirable.³

Such was the organization of government and such the fabric of society in post-Revolutionary Connecticut. Into this atmosphere was projected in the autumn of 1789 the 12 amendments to the Federal Constitution which Congress had proposed. The spirit of tolerance and of personal liberty embodied in those amendments was contrary

¹ “Nowhere else in New England did the ruling hierarchy maintain so glacial a grip on society.” Parlington, V. L., Main Currents in American Thought, I, 358.
² “Judge Swift, the deepest student of Connecticut polity, defined the position of the legislature, ‘By nature of the constitution, they possess the power of doing and directing whatever they think to be for the good of the community. It is difficult to define or limit its extent.’” Purcell, R. J Connecticut in Transition, I, 188.
³ The Wyllys family held this post from 1712 to 1810. Purcell, op. cit., 184.
to the traditions and practices of the State, and one would not expect that they would have a sympathetic reception. It is difficult, however, to determine precisely how the legislature viewed them. The records of both houses are lamentably incomplete. Neither council nor house of representatives kept a record of its debates or of the individual votes. The journal of the lower house records only the passage or defeat of a measure and gives no analysis of the opposing forces; the journal of the council is only a list of appointments and appropriations for each session, with no reference to its other proceedings. These fragmentary accounts are supplemented by a few scattered engrossed bills and resolutions bearing the notations of clerks as to their progress through the legislative mill.

The official text of the amendments, as communicated by President Washington, reached Governor Huntington early in October 1789. The first of the 12 outlined a scheme for the distribution of congressional representation; the second provided that no law varying the compensation of Members of Congress should become effective except after the intervention of an election of representatives. Neither of these amendments was ever adopted by the required number of States. The present Bill of Rights, the first 10 amendments, constituted articles III–XII of the original resolution of Congress.

At the regular session of the Connecticut Legislature meeting in October 1789 the amendments were taken up and house of representatives adopted all the articles except the second. The council voted to postpone action on the amendments until the next session. None of these proceedings are recorded in the Journals, but the original engrossed resolution reads as follows:

The Congress of the United States of America begun & holden at the city of New York on the 4th day of March, A. D. 1789, having proposed to the legislatures of the several States certain articles as amendments to the Constitution of the United States.

This assembly [ ] do ratify as part of said Constitution the first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, & twelfth articles as proposed aforesaid.

Passed in the house of representatives.

JAMES DAVENPORT, Clerk.

In the upper house:

The further consideration of this bill is referred to the general assembly of this State, to be holden at Hartford on the 2d Thursday of May next.

Test:

GEORGE WILLYS, Secret.

As will be seen, the body of this document is undated, but the endorsement reads, “Bill Ratifying Amendments to ye Constitution /Oct 1789/ p l H passed lower House.”

From this final endorsement it would appear that a joint committee of conference on the differing votes of the two houses was appointed, according to legislative custom. This conference seemingly failed to effect any reconciliation, and it is probable that no further action was taken at that session.

4 The original parchment, undated, containing the resolution of Congress and the text of the amendments, is to be found (1937) without any covering letter, in the office of the Secretary of State in Hartford. This document is kept loosely in a safe, together with a number of unrelated papers, and it is impossible to assign to it any archival reference of value in locating it.
By the time the legislature met in May 1790, eight States, of which New Hampshire was the sole representative of New England, had ratified the first 10 amendments. The Journal of the Connecticut House of Representatives contains the following entry for 17 May 1790:

Ordered that Tuesday afternoon [18 May] be assigned for Discussing the amendments to Constitution of the United States.

The action of the following day is recorded confusingly in these terms:

Pursuant to the Ordr of the day—took into consideration the amendments to the Constitution of the United States. Ratified by Bill the 2d 3d 4th 5th 6th 7th 8th 9th 10th 11th & 12th amendments. & rejected the 1st & 2d Amendment.

Later in the day is found the entry:

Passed bill in form for ratifying certain of the proposed amendments to the Constitution of the United States.

The original document on which the first of these two motions was presented appears to settle the disparity in the numbers of the articles given in the Journal, for it lists as passed only articles III–XII. On this paper is found the notation:

Dissented to. in the upper House
Test George Willys, Secrety.

The lower house then appointed a committee of two members, Major Phelps and Captain Swift, "to confer with such Gentlemen as the Govr & Council may appoint on the differing Votes of the houses on this Bill". Roger Newberry was appointed on behalf of the upper house, but apparently this committee was unable to resolve its difficulty, for we find that:

On Report of the Comtee of Conference and Reconsideration this upper House do adhere to their first Vote on the bill.6

At the same session a separate bill was passed in the upper house, ratifying all twelve of the proposed amendments. This proposal was defeated in the house of representatives on May 21, 1790, and after the usual committee had reported the lower house adhered to its original vote.6

When the Connecticut Legislature assembled for its next session, in October 1790, Rhode Island had added its ratification of the 10 amendments.7 At this session the lower house rejected all the amendments and later joined with the council in voting to postpone further consideration to the session of May 1791.8

It appears that the Connecticut Legislature never considered ratifying the Bill of Rights after October 1790. The journal of the house of representatives for the May and October sessions of 1791 contains no reference to such discussion, and no evidence of any kind has been uncovered to indicate that the question ever again came before either body of the assembly. As the 10 amendments became effective with Virginia's ratification in December 1791, it seems unlikely that the Connecticut Legislature took occasion to pass judgment on them at a later date.

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6 Connecticut State Archives (Hartford) Civil Officers series, 2/22, no. 3.
7 Journal, 1790: The engrossed resolution is found in Civil Officers, 2/22, 4a–d. The Journal for the years 1789–90 and January 1791, inter alia, is found in the vault of the Secretary of State in Hartford (1937). The Journal for the May and October sessions, 1791, is in the State Archives, in the State Library at Hartford.
9 Civil Officers, 2/22 5 a–b and Journal, 1790.
This, then, is the simple statement of the recorded votes of Connecticut on the adoption of the amendments. Obviously, it provides no explanation of the apathy or hostility implicit in the failure of that State to accept those measures.

Nor do the newspapers of the period provide any illumination. A careful study of the files of the eight leading papers of the State during the sessions of 1789, 1790, and 1791 brings to light but one reference to the amendments before the legislature. The Connecticut papers of the time carried little news of the State government but fairly extensive reports from the Federal Capital. News from the State capitals was largely confined to pre-session lists of the members and to post-session lists of the statutes enacted. Nowhere do we get accounts of the debates, and only rarely discussion of the issues. Leading citizens, eager to present their own views to the public, occasionally addressed pseudonymous letters to the papers, but after 1788 no letter relating to a bill of rights has been discovered. Taking the press as a whole, this circumstance would seem to mirror a tone of apathy rather than hostility.

For an explanation of Connecticut's failure to ratify the amendments and for clear-cut expressions of opinion on the issues involved, it is necessary to study the attitude of Connecticut toward the original Constitution, and the sentiments of the Connecticut Members in that First Congress where the Bill of Rights was drafted.

If the Constitution was offered to the States in a spirit of compromise, its draftsmen were yet not so vain as to believe that it would be accepted without cavil. The response of seven of the States justified this realistic attitude. Five ratified the Constitution, but expressed a formal request for amendments; two others ratified, but minorities in each of them asked for amendments of one kind or another. In Connecticut the Federalists were in full control and they pushed acceptance through at an early date. The opposition was never formidable and none of it was occasioned by the absence of a bill of rights.

Before the First Congress assembled in 1789, opposition to amendment, like enthusiasm for it, began to arise. Roger Sherman, doughty Representative of Connecticut in all the important intercolonial conferences, immediately entered the fray. Sherman's importance in determining the sentiments of his State is not to be underestimated. Not only had he signed all the declarations from the Articles of Association down, but he had held numerous State offices, and in 1784 had been chosen first mayor of New Haven. A man of wealth, he was a natural spokesman for the conservative group that ruled the State.

As early as December 1788 he published in the New Haven Gazette two letters in which he opposed the immediate adoption of amendments. He argued first that the Constitution should be given a 9

9 The (Hartford) Connecticut Courant of Oct. 12, 1789, printed the text of the proposed amendments without comment.

10 An excellent sketch of the most important newspaper in this period is found in the New England Quarterly, III, 463-463, the Connecticut Courant, a Representative Newspaper in the Eighteenth Century, by E. Wilder Spaulding. The Courant supported the adoption of the Constitution, but opened its columns to the anti-Federalists.

11 Steiner, B. C., Connecticut's Ratification of the Federal Constitution, Amer. Antiquarian Soc., Proceedings, new series, XXV, 70-127. Connecticut was the fifth State to ratify the Constitution; the vote was 128 to 40.

12 A sympathetic portrait of Sherman is found in the article by J. P. Boyd in the New England Quarterly, V, 221-236, April 1932.

fair trial and that the need for amendment could be demonstrated only by experience. Then he shifted ground and argued that “the immediate security of the civil and domestic rights of the people will be in the government of the particular States”, and that “it should not be expedient to admit the Federal Government to interfere with them.” Of the freedom of the press he avowed that it could be in no danger because it was “not put under the direction of the new Federal Government.” It is at once clear that what Sherman feared most was Federal limitation on the Supreme Legislature of Connecticut as the instrument of the particular stratum of society for which he spoke.

At the first session of Congress the Connecticut Members of the House of Representatives adopted a tone of hostility to the proposal to incorporate a bill of rights into the Constitution. When Virginia’s application was introduced on May 5, 1789, Benjamin Huntington asked that it be tabled until such a time as two-thirds of the States should have presented similar requests.14

A month later, Sherman, who was at every step to block the passage of the amendments, asked that the question be postponed until Congress had completed the task of organizing the Government. On this occasion he said briefly, and without the presentation of evidence to support his claim:

The State I have the honor to come from adopted this system by a very great majority, because they wished for the Government; but they desired no amendments.15

He took the stand that Congress should not concern itself with amendments until a more pronounced demand was made felt. He professed to believe it unlikely that any amendments could be ratified as so few of the States had expressed a desire for them.16 Later, as it became clear that a genuine desire for amendments prevailed, Sherman assumed the even less tenable ground that only experience could dictate the necessity of amendment.17

During the middle of August the House debated and drafted the text of the amendments. Sherman was ever in the heat of the argument, vainly trying to stem the flood of enthusiasm for a declaration of civil rights. Beneath the argument that the people were secure in these rights and hence needed no assurance, he attempted to conceal his basic hostility to any organic law that would limit Congress or the State legislatures in the untrammeled exercise of their day-to-day desires. In opposing the amendment guaranteeing the right of petition and assembly, Sherman was joined by another Connecticut stalwart, Jeremiah Wadsworth.18 Benjamin Huntington associated himself with the drive against the religious toleration clause in the first amendment.19 Sherman opposed the constitutional guarantee against the quartering of troops in peacetime.20 Finally, he objected to the tenth amendment conceding all residual power to the States.21

14 Gales, J., The Debates and proceedings in the Congress of the United States • • •, I, 261. Hereinafter referred to simply as Gales.
16 Gales, op. cit., 465.
17 Ibid., 686, July 21, 1789.
18 Wadsworth was a consistent federalist from the first.
19 Ibid., 757-758.
20 Ibid., 781.
21 Ibid., 790.
was, in a word, a complete federalist, but his federalism was not enlightened by any conception of the function of organic law in preserving civil liberties.

What is one to conclude from this evidence? It is at best ambiguous. The main pattern of society and thought in post-Revolutionary Connecticut is clear. One would expect to find hostility toward the Jeffersonian concepts of personal liberty and that expectation is confirmed by the statements of Connecticut Representatives in Congress. At no time is a sympathetic voice publicly raised to the support of the proposed amendments. On the other hand, each house of the Connecticut Legislature voted for those 10 amendments but disagreed over the first 2. They could not, however, agree legislatively. This is admittedly a surprising circumstance, but one is forced to conclude that ultimately, apathy prevailed and that the issue over the Bill of Rights was allowed to become obscured by the irrelevant controversy over the other two proposals. Otherwise Connecticut would have acted as other States did in ratifying those particular measures of which she approved and in withholding consent to the others.